

Assembly Bill No. 568

Passed the Assembly September 10, 2009

Chief Clerk of the Assembly

Passed the Senate September 9, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code, and to amend Section 11226 of the Penal Code, relating to counterfeit goods.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, Lieu. Counterfeit goods: abatement.

Existing law provides that every building or place used for the purpose of illegal gambling, lewdness, assignation, or prostitution, and every building or place wherein or upon which these acts take place, is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. Existing law authorizes a district attorney, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

This bill would provide that if a person is convicted of a specified crime, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods, defined to include counterfeit of a registered mark or any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose specified information, shall be deemed a nuisance that may be enjoined, abated, and prevented, whether it is a public or private nuisance. The bill would make certain remedies and procedures in existing law, a violation of which is a crime, relative to the abatement of buildings or places where a nuisance exists applicable to these provisions. The bill would require a district attorney, city attorney, or city prosecutor that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to these provisions to report, by October 1, 2013, to the Senate and Assembly Committees on Judiciary on their use of these abatement provisions and their effectiveness. The bill's provisions would become inoperative on January 1, 2015.

Because a violation of a restraining order or an injunction relative to a nuisance pursuant to the provisions of this bill would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 17800) is added to Part 3 of Division 7 of the Business and Professions Code, to read:

CHAPTER 4. COUNTERFEITING ABATEMENT

17800. (a) If there is a conviction for a violation of Section 653w or paragraph (2) of subdivision (a) of Section 350 of the Penal Code by any person, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods shall be deemed a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. The remedies and procedures provided in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code may be applied by the court. For purposes of this section, an abatement under Section 11230 of the Penal Code is discretionary rather than mandatory and may be for a period up to one year.

(b) An owner shall be provided with 30 days' notice prior to the filing of an action to abate a nuisance under the provisions of this section.

(c) As used in this chapter, "counterfeit goods" means (1) any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office or (2) any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose the

information as specified in subdivision (a) of Section 653w of the Penal Code.

17801. A district attorney, city attorney, or city prosecutor that maintains an action or actions to enjoin, abate, or prevent a nuisance pursuant to the provisions of this chapter shall report to the Senate and Assembly Committees on Judiciary, by October 1, 2013, on their use of the provisions of this chapter and their effectiveness. The report shall include, but not be limited to, all of the following:

(a) The frequency of use of the nuisance abatement provisions as well as statistics on whether the use of the abatement provisions correlates with a decrease in the use of criminal penalties.

(b) Any statistics or information concerning the impact of the use of these provisions on counterfeiting overall, both in the relevant county or city and overall.

17802. This chapter shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 2. Section 11226 of the Penal Code is amended to read:

11226. Whenever there is reason to believe that a nuisance, as defined in this article or as set forth in Section 17800 of the Business and Professions Code, is kept, maintained, or is in existence in any county, the district attorney, in the name of the people of the State of California, or the city attorney of an incorporated city or any city and county may, or any citizen of the state resident within the county in his or her own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

The complaint in the action shall be verified unless filed by the district attorney or the city attorney.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor